**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 1148 OF 2005**

Bhimrao Apparao Nagur & anr. Appellants

V/s.

Chandrakant Tukaram Dalave & ors. Respondents

Mr. G.S. Godbole Advocate for the Appellants
Mr. Amit Borkar Advocate for the Respondents

**CORAM : ANOOP V. MOHTA,J.**

**DATED : 11th July, 2007**

**P.C.**

The Suit for perpetual injunction filed by the appellant was dismissed. The Appellate Court has also maintained the said order.

2. As the suit in question was for perpetual injunction under section 38 of the Specific Relief Act, both the Courts come to conclusion that the plaintiff failed to porve that he has acquired right of air and light from northern window of the suit shop. Further that he has any right to discharge the rain water through the northern side of the suit shop. The reasoning as given by both the Courts based on Section 15 of the India Easements Act, 1882 after assessing the factual position on record in no way

said to be perverse. Basically, when there is no material to show that the windows and panhalas were in existance in the suit premises since last 20 years. There is no further evidence on record that since last 20 years the plaintiff was enjoying 2 windows and 3 panhalas as averred. Having once comes to this conclusion, the plaintiff's right as claimed has rightly been rejected.

3. The Suit, therefore, rightly observed to be not maintainable in the present form. There is no perversity. The reasoning as given is within the framework of law and record. Resultantly, second appeal is dismissed.

**[ANOOP V. MOHTA, J.]**